

By: Ellis

S.B. No. 918

A BILL TO BE ENTITLED

AN ACT

relating to the sexual exploitation of minors

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 92 to read as follows:

Chapter 92. SEXUAL EXPLOITATION OF MINORS

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Minor" means a person under 18 years of age as defined by Section 101.003 of the Family Code.

(2) "Sexual contact" means:

(A) "deviate sexual intercourse" as defined by Section 21.01, Penal Code;

(B) "sexual contact" as defined by Section 21.01, Penal Code;

(C) "sexual intercourse" as defined by Section 21.01, Penal Code; or

(D) requests for conduct described by Paragraph (A), (B), or (C).

(3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person.

Sec. 92.002. SEXUAL EXPLOITATION CAUSE OF ACTION. A person is liable for damages for the sexual exploitation of a minor if the

1 minor suffers, directly or indirectly, a physical, mental, or
2 emotional injury caused by, resulting from, or arising out of:

3 (1) sexual contact between the minor and the person;

4 or

5 (2) sexual exploitation of the minor by the person.

6 Sec. 92.003. LIABILITY OF EMPLOYER. (a) An employer of a
7 person who sexually exploits a minor is liable for damages if the
8 minor is injured as described by Section 92.002 and the employer:

9 (1) hires the person to supervise, advise or direct
10 the activities of one or more minors; and

11 (2) fails to perform a criminal background check on
12 the person; or

13 (3) knows or has reason to know that the person has
14 engaged in any sexual offense as defined by the Penal Code,
15 regardless of where the offense was committed.

16 (b) An employer or former employer of a person who sexually
17 exploits a minor is liable for damages if the minor is injured as
18 described by Section 92.002 and the employer or former employer:

19 (1) knew of a prior occurrence of the sexual
20 exploitation by the employee; and

21 (2) intentionally failed to report such sexual
22 exploitation to law enforcement authorities; or

23 (3) receives a specific request by an employer or
24 prospective employer of the person, for information concerning the
25 possible existence or nature of sexual exploitation; and

26 (4) fails to disclose the occurrence of the sexual
27 exploitation.

1 (c) As used herein, "employer" includes a principal who has
2 the right to control the details of the person's work. It is not
3 necessary that the employer agree to compensate or remunerate the
4 person.

5 (d) An employer or former employer is liable under this
6 section only to the extent that the failure to take the action
7 described by Subsection (a) or (b) was a proximate and actual cause
8 of damages sustained.

9 Sec. 92.004. DAMAGES. (a) A plaintiff who prevails in a
10 suit under this section may recover actual damages, including
11 non-economic damages for mental anguish even if an injury other
12 than mental anguish is not shown.

13 (b) In addition to an award under Subsection (a), a
14 plaintiff who prevails in a suit under this section may recover
15 exemplary damages and reasonable attorney fees.

16 Sec. 92.005. LIMITATIONS. An action for damages under this
17 chapter shall be brought within 20 years from the 18th birthday of
18 the minor.

19 Sec. 92.006. ACTIONS AGAINST GOVERNMENTAL UNITS. (a) In
20 this section, "governmental unit" has the meaning assigned by
21 Section 101.001(3)(B).

22 (b) Subject to Subsection (c), a minor or another person
23 acting on behalf of a minor may bring an action under this section
24 against a governmental unit that is an employer of a person who
25 commits any conduct described by Section 92.002(1) or (2) in
26 relation to the minor. In an action brought under this subsection,
27 the minor may obtain:

1 (1) damages;

2 (2) an order requiring the governmental unit to
3 discharge the employee who committed the conduct;

4 (3) court costs; and

5 (4) reasonable attorney's fees, as determined by the
6 court.

7 (c) A minor or person acting on behalf of a minor may not
8 bring an action under Subsection (b) unless, 60 days before the date
9 that action is to be filed, the person notifies the governmental
10 unit in writing of its claim as prescribed in Chapter 101, Civil
11 Practice and Remedies Code.

12 (d) Governmental immunity to suit is waived and abolished
13 only to the extent of the liability created by Subsection (b).

14 SECTION 2. This Act applies only to a cause of action that
15 accrues on or after the effective date of this Act. A cause of
16 action that accrues before the effective date of this Act is
17 governed by the law applicable to the action immediately before the
18 effective date of this Act, and that law is continued in effect for
19 that purpose.

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2007.